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Torture and other cruel, inhuman or degrading treatment or punishment

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, submitted in accordance with Assembly resolution 60/148.

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Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Summary

In the present report, submitted pursuant to General Assembly resolution 60/148 and Commission on Human Rights resolution 2005/39, the Special Rapporteur addresses issues of special concern to him, in particular overall trends and developments with respect to questions falling within his mandate.

In continuing to maintain a focus on the absolute prohibition of torture in the context of counter-terrorism measures, the Special Rapporteur draws attention to the principle of the non-admissibility of evidence extracted by torture in article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Recent key court decisions are reviewed by the Special Rapporteur to illustrate the increasing trend towards the use of "secret evidence" put forward by prosecuting and other authorities in judicial proceedings, with a heavy burden of proof placed on an individual to establish that such evidence was obtained under torture. In doing so, such practices potentially undermine the absolute prohibition laid down in article 15. The Special Rapporteur recalls that in the light of well-founded allegations of torture under article 15 of the Convention the burden of proof shifts to the State to establish that evidence invoked against an individual has not been obtained under torture. In the section that follows, the Special Rapporteur discusses the significance of the entry into force of the Optional Protocol to the Convention. The rationale for independent preventive visits to places of detention is discussed, and practical experience relevant to the effective implementation of the Optional Protocol is given. As the most effective mechanism established to prevent the practice of torture, the Special Rapporteur calls on States to ratify the Optional Protocol and establish independent and effective national visiting mechanisms.

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I. Introduction

1. The present report is the eighth submitted to the General Assembly by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment. It is submitted pursuant to General Assembly resolution 60/148 (para. 28) and Commission resolution 2005/39 (para. 29). It is the second report submitted by the present mandate holder, Manfred Nowak. This report includes issues of special concern to the Special Rapporteur, in particular overall trends and developments with respect to his mandate.

2. The Special Rapporteur draws attention to document E/CN.4/2006/6, his main report to the Commission on Human Rights. In that report the Special Rapporteur examined the implications of the terms of reference for fact-finding missions, specifically with respect to visiting places of detention. In the view of the Special Rapporteur, they are fundamental, common-sense considerations that are essential to ensure an objective, impartial and independent assessment of torture and ill-treatment during country visits. Attention was also drawn to the importance of maintaining the focus on and remaining vigilant against practices such as the use of diplomatic assurances. The Special Rapporteur reiterates that they are not legally binding, undermine existing obligations of States to prohibit torture and are ineffective and unreliable in ensuring the protection of returned persons, and therefore shall not be resorted to by States. In the final part of the report, he examined the distinction between torture and cruel, inhuman or degrading treatment or punishment. The proportionality principle is a precondition for assessing the scope of application of the prohibition of cruel, inhuman or degrading treatment or punishment — except for the situation where one person is under the total control of another (i.e. where a person is rendered powerless). In such situations, and in particular in situations of interrogation, no proportionality test may be applied and the prohibition of cruel, inhuman or degrading treatment or punishment is equally as absolute as the prohibition of torture.

3. Document E/CN.4/2006/6/Add.1 covered the period 1 December 2004 to 15 December 2005 and contained allegations of individual cases of torture or general references to the phenomenon of torture, urgent appeals on behalf of individuals who might be at risk of torture or other forms of ill-treatment, as well as responses by Governments. The Special Rapporteur continues to observe that the majority of communications are not responded to by Governments. If responses are received most are characterized by significant delays, denials, related to criminal allegations against the individuals without addressing the allegations of torture or ill-treatment, indicated that investigations into the allegations were under way but rarely provided information on outcomes, including criminal proceedings against perpetrators and compensation paid to victims or their families. The Special Rapporteur reiterates that cooperation by States to clarify allegations constitutes an essential obligation without which he is not in a position to carry out his mandate properly.

4. Document E/CN.4/2006/6/Add.2 contained information on the state of follow-up to the recommendations resulting from previous country visits. The Special Rapporteur is grateful for the information provided by the Governments of Azerbaijan, Brazil, Cameroon, Chile, Mexico, Romania, the Russian Federation, Spain, Turkey, Uzbekistan and Venezuela. He regrets that the Governments of

Kenya and Pakistan have not provided follow-up information since the visits were carried out in 1999 and 1996, respectively.

5. Addenda 3 to 6 are the reports on the country visits to Georgia, Mongolia, Nepal and China, respectively. Document E/CN.4/2006/120 contains the joint report prepared with the Special Rapporteurs on the right of everyone to the highest attainable standard of physical and mental health, the independence of judges and lawyers, and freedom of religion or belief, and the Chairperson of the Working Group on Arbitrary Detention concerning the human rights situation of detainees held at the United States of America Naval Base at Guantánamo Bay, Cuba.

II. Activities related to the mandate

6. The Special Rapporteur draws the attention of the General Assembly to the activities he has carried out pursuant to his mandate since the submission of his report to the Commission on Human Rights.

Communications concerning human rights violations

7. During the period from 16 December 2005 to 31 July 2006, the Special Rapporteur sent 44 letters of allegations of torture to 25 Governments and 100 urgent appeals on behalf of persons who might be at risk of torture or other forms of ill-treatment to 46 Governments.

Country visits

8. With respect to fact-finding missions, the Special Rapporteur undertook a visit to Jordan from 25 to 29 June 2006. The Special Rapporteur expressed his appreciation to the Government for the full cooperation it extended to him. He visited a number of detention facilities where he could carry out unrestricted inspections and private interviews with all the detainees he requested to see. There were two regrettable exceptions, which constituted clear breaches of the terms of reference for the visit, which had been accepted by the Government: he was denied the right to speak to detainees in private during his visit to the General Intelligence Directorate (GID); and at the Public Security Directorate's Criminal Investigation Department (CID) in Amman, the authorities unsuccessfully attempted to obstruct the Special Rapporteur and hide evidence. During the course of the visit, many consistent and credible allegations of torture and ill-treatment were brought to the attention of the Special Rapporteur. In particular, it was alleged that torture was practised by GID at its Amman headquarters to extract confessions and obtain intelligence in pursuit of counter-terrorism and national security objectives, and within CID in Amman, to extract confessions in the course of routine criminal investigations. He also received many allegations of torture in various local police stations. Based on interviews with detainees, including the forensic medical evidence gathered, and the meetings he held with prison officials, the National Centre for Human Rights, non-governmental organizations (NGOs) and lawyers, the Special Rapporteur confirms that the practice of torture is systematic in GID and CID.

9. With respect to conditions of detention in prisons and pre-trial detention centres, the Special Rapporteur was repeatedly told by officials that the philosophy of humanity and rehabilitation of prisoners was a hallmark of the Jordanian penal

system. Upon visiting the Al-Jafr Correction and Rehabilitation Centre in the south-east of the country, it was apparent that this notion was stretched to the extreme. In fact, the centre could only be described as a punishment centre, where detainees were routinely beaten and subjected to corporal punishment amounting to torture. The isolation and the harshness of the desert environment compounded the already severe conditions of the prisoners there. The Special Rapporteur found the conditions in both the Siwaqa and the Juweidah (Male) Correction and Rehabilitation Centres to be more humane than in Al-Jafr, although he continued to receive credible reports of regular beatings and other forms of corporal punishment by prison officials in those centres.

10. While the Special Rapporteur received no allegations of ill-treatment in the Juweidah (Female) Correction and Rehabilitation Centre, he remains critical of the policy of holding females in "protective" detention, under the provisions of the 1954 Crime Prevention Law, because they are at risk of becoming victims of honour crimes. Depriving innocent women and girls of their liberty, for as long as 10 or 14 years, can only be characterized as inhuman treatment and is highly discriminatory.

11. The Special Rapporteur concludes that the practice of torture persists in Jordan because of a lack of awareness of the problem, and because of institutionalized impunity. The heads of the security forces and of all the detention facilities — criminal investigation, pre-trial, prison and intelligence — he visited denied any knowledge of torture, despite having been presented with allegations substantiated by forensic medical evidence. Moreover, in practice the provisions and safeguards laid out in Jordanian law to combat torture and ill-treatment are meaningless because the security services are effectively shielded from independent criminal prosecution and judicial scrutiny as abuses by officials of those services are not dealt with by ordinary courts and prosecutors, but by special police courts, intelligence courts and military courts, which clearly lack guarantees of independence and impartiality. The fact that no official has ever been prosecuted for torture under article 208 of the Criminal Code underlines this conclusion and illustrates the existence of total impunity. The Special Rapporteur will present a final report on the visit with his recommendations at the March 2007 session of the Human Rights Council. In view of the clear commitment of the Government to human rights, the Special Rapporteur is sure that every effort will be taken to implement his recommendations.

12. On the question of pending visits for the remainder of 2006, the Special Rapporteur will travel to the Russian Federation, including the North Caucasus, and Paraguay, respectively in October and November. The Special Rapporteur is pleased to report that he has accepted an invitation from the Government of Sri Lanka to visit the country in early 2007. He also reports that following a meeting on 20 June 2006 in Geneva with the Minister of Justice of Zimbabwe, he is confident that an invitation to visit that country will soon be forthcoming.

13. In July 2006, the Special Rapporteur renewed requests for invitations from the following States: Algeria (request first made in 1997); Afghanistan (2005); Belarus (2005); Bolivia (2005); Côte d'Ivoire (2005); Egypt (1996); Equatorial Guinea (2005); Eritrea (2005); Ethiopia (2005); India (1993); Indonesia (1993); Iran (Islamic Republic of) (2005); Iraq (2005); Israel (2002); Libyan Arab Jamahiriya (2005); Nigeria (2005); Saudi Arabia (2005); Syrian Arab Republic (2005); Togo

(2005); Tunisia (1998); Turkmenistan (2003); Yemen (2005); and Zimbabwe (2005). He regrets that some of these requests are of long standing.

14. In 2006, the Special Rapporteur also requested invitations from the Governments of Fiji, Liberia and Papua New Guinea, and a follow-up visit to the Government of Uzbekistan.

15. The Special Rapporteur draws attention to a number of country-related follow-up activities that he has undertaken over the reporting period. On 14 March 2006 he discussed the joint report on the situation of detainees at Guantánamo Bay (E/CN.4/2006/120) with the United States Ambassador to Austria.

16. In order to ensure the awareness of United Nations country teams of the recommendations stemming from his country visits, he discussed those conducted in 2005 with the United Nations Development Programme Regional Bureau for Europe and the Commonwealth of Independent States in Bratislava on 22 May 2006.

17. In follow-up to his country visit to China of November 2005, the Special Rapporteur participated in the European Union (EU)-China Human Rights Dialogue held on 23 May 2006 in Vienna, where questions relating to the effective implementation of recommendations by international human rights mechanisms were discussed.

18. On 8 June 2006 he met with representatives of the United States Department of State in Washington, DC to discuss Guantánamo Bay and related issues.

19. In follow-up to his country visit to China of November 2005, he participated in a meeting organized by the Ministry of Foreign Affairs of Switzerland in the context of the Berne Process on human rights in China on 21 June 2006.

20. On 1 and 2 July 2006, following his country visit to Jordan, he met in Amman with Iraqi torture victims, NGOs and representatives of the United Nations Assistance Mission in Iraq (UNAMI) in order to gather information about the situation of torture in Iraq. Meetings were also held by videolink with representatives of NGOs, the Iraqi Ministry of Human Rights and UNAMI staff in Baghdad.

Press statements

21. The Special Rapporteur issued press statements jointly with other special procedures mandate holders concerning: the deterioration of the human rights situation in Belarus (29 March 2006), the crackdown on demonstrators in Nepal (20 April 2006), an appeal to the Government of Myanmar to end counter-insurgency operations targeting civilians (16 May 2006), the failure of the Democratic People's Republic of Korea to cooperate with United Nations special procedures (31 May 2006), and the closure of the Guantanamo Detention Centre (14 June and 6 July 2006).

22. On 26 June 2006, on the occasion of the International Day in Support of Victims of Torture, the Special Rapporteur, together with the Committee against Torture, the Board of Trustees of the United Nations Voluntary Fund for Victims of Torture and the United Nations High Commissioner for Human Rights, issued a joint statement.

23. The Special Rapporteur held two key press conferences, on 16 March 2006, at the invitation of the United Nations Regional Information Centre in Brussels, and on 30 March 2006 in Geneva, in relation to his mandate, activities and country visits.

Highlights of key presentations/consultations/training courses

24. On 18 January 2006, the Special Rapporteur, together with a member of the Council of Europe Committee on the Prevention of Torture, participated in an expert talk in Graz, Austria, entitled, "The prohibition of torture. Old problems and new chalienges".

25. On 27 February 2006, he was invited by the Danish Institute for Human Rights in Copenhagen to give a lecture on "The Special Rapporteur on torture: mandate, activities, challenges".

26. On 7 March 2006, Friedensbüro Salzburg, Amnesty International and others invited him to give a speech on "Torture: from China to Guantánamo. Taking stock of the inhumanity."

27. On 28 March 2006, he participated in a training course for Latin American prison officials organized by the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Lund, Sweden.

28. On April 2006, the Special Rapporteur delivered a lecture at Humboldt University, Berlin, entitled, "Torture as a form of violence: challenges in the 21st century."

29. With a view to strengthening the collaboration among United Nations mechanisms dealing with the question of torture, on 2 May 2006, the Special Rapporteur held consultations with members of the Committee against Torture in Geneva, the first such occasion since he assumed the mandate. Issues of common interest were discussed, including: strategies for cooperation; coordination of visits, including with the Subcommittee established under the Optional Protocol; ratification of the Optional Protocol; highlights of country visits of the Special Rapporteur and country visit methodology; the distinction between torture and cruel, inhuman and degrading treatment; the attention given to gender issues; diplomatic assurances; lawful sanctions; capital punishment; as well as the burden of proof in relation to article 15 of the Convention.

30. On 4 May 2006 he met in Brussels with the European Parliament Subcommittee on Human Rights to discuss issues related to torture, and with the EU Working Group on Human Rights (COHOM) to give a general overview of countries' cooperation with the Special Rapporteur.

31. Between 9 to 14 June 2006, the Special Rapporteur met with representatives of the Organization of American States in Washington DC, and held consultations with representatives of the Inter-American Commission on Human Rights to discuss issues of common concern as well as strategies for collaboration between the two mechanisms, such as through the exchange of information and possible joint actions. He also met with a number of NGOs in Washington, including the Laogai Research Foundation, the Centre for Justice and International Law, the American Civil Liberties Union, Human Rights Watch and Human Rights First.

Torture in the context of counter-terrorism measures

32. On 24 January 2006, the Special Rapporteur met with several Council of Europe institutions in Strasbourg, France. He gave a presentation to the Council of Europe Parliamentary Assembly Committee on Legal Affairs and Human Rights and exchanged views on alleged secret detentions in Council of Europe member States. He also discussed issues related to the detention centre in Guantánamo Bay with the Secretary-General of the Council and with a number of representatives of member-States.

33. On 22 February 2006, the Special Rapporteur gave a presentation at a parliamentary hearing on counter-terrorism strategies at the German Parliament in Berlin.

34. On 9 March 2006 he participated in a public hearing in Stockholm on the threats to the absolute prohibition of torture by diplomatic assurances. He met with representatives of the Swedish Helsinki Committee, Amnesty International, lawyers for Mr. Agiza and Mr. El Zari, the Swedish Ministry of Foreign Affairs and the Swedish Parliament to discuss the issue of diplomatic assurances and, in particular, the "Agiza case".

35. The Special Rapporteur met in Vienna with the Austrian Federal President, Heinz Fischer, to discuss torture in the context of counter-terrorism strategies.

36. On 4 May 2006 the Special Rapporteur participated in hearings on United States Central Intelligence Agency (CIA) rendition flights and secret places of detention held by the European Parliament Temporary Committee on the alleged use of European countries by CIA for the transport and illegal detention of prisoners.

37. On 9 May 2006, he gave a presentation in Dublin at a seminar on the duties of Governments regarding extraordinary renditions, organized by the Irish Centre for Human Rights and Amnesty International.

38. On 22 June 2006, the Special Rapporteur met a delegation of the European Parliament to discuss the problems of rendition flights and secret places of detention in Europe.

Reform of the United Nations human rights machinery

39. On 20 to 22 January 2006, the Special Rapporteur participated in the Wilton Park Conference in the United Kingdom, entitled, "How to advance the human rights agenda?"

40. On 29 March 2006 the Special Rapporteur participated in a brainstorming on the United Nations Human Rights Council with EU representatives and NGOs, organized by the International Service for Human Rights in Geneva.

41. On 2 June 2006, at the invitation of the United Nations Association of Belgium, the Special Rapporteur delivered a speech entitled, "Reforming the UN human rights machinery", in the course of the colloquium, "The UN Human Rights Council: challenges and opportunities."

42. On 20 June 2006, the Special Rapporteur participated in an informal meeting in Geneva organized by Amnesty International on the Human Rights Council review of the special procedures.

43. On 8 July 2006, the Special Rapporteur gave a presentation entitled, "European Union input to the universal periodic review mechanism: how to deal with country situations?", in the course of a diplomatic conference on the "Role of the European Union in the newly established Human Rights Council" organized by the European Inter-University Centre for Human Rights and Democratization in Venice, Italy.

III. The principle of the non-admissibility of evidence extracted by torture

A. Significance of article 15 of the Convention

44. The Special Rapporteur continues to receive numerous allegations involving violations of the principle of the non-admissibility of evidence extracted by torture as laid down in article 15 of the Convention, which provides: "Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

45. The rationale behind article 15 is twofold. Firstly, confessions or other information extracted by torture is usually not reliable enough to be used as a source of evidence in any legal proceeding. Secondly, prohibiting the use of such evidence in legal proceedings removes an important incentive for the use of torture and, therefore, shall contribute to the prevention of the practice.

46. It is a matter of concern to the Special Rapporteur that the absolute prohibition of using evidence extracted by torture has recently been come into question notably in the context of the global fight against terrorism. The former British Home Secretary has argued, for example, that the Special Immigration Appeals Commission, a British superior court established by statute, may use evidence obtained by torture in another country as long as this evidence had been extracted without the complicity of the British authorities.[1] This argument was supported in 2004 by a judgment of the Court of Appeals.[2] Similarly, a Higher German Court in Hamburg, in sentencing Mr. El Motassadeq, who was accused of having participated in the planning of the 11 September 2001 attacks in the United States, made use of the full summaries of the testimonies given by three Al-Qaida suspects before United States authorities despite the fact that these persons were being held in secret detention and that there was serious concern that their testimonies had been extracted by torture.[3]

47. According to article 15 of the Convention, only those statements are inadmissible as evidence which are "established to have been made as a result of

[1] Cf., e.g., Lord Bingham in *A and others v Secretary of State for the Home Department* (2005) United Kingdom House of Lords 71, para.1.

[2] See (2004) England and Wales Court of Appeal (Civil Division) 1123. Judgement of 11 August 2004, decided by a majority of 2 to 1.

[3] See the decision of 14 June 2005 of the Hanseatic Higher Regional Court (*Beschluss IV - 1/04 des Hanseatischen Oberlandesgericht Hamburg, Neue Juristische Wochenschrift 2005 Heft 32*) and the judgement of 19 August 2005, sentencing Mr. El Motassadeq to seven years' imprisonment for membership of a terrorist organization (OLG Hamburg, 4. Strafsenat, Urteil, 2 StE 4/02-5).

torture". The central question here is the interpretation of the word "established". It is of utmost importance in this respect that there exists a procedure which affords protection to the individual against whom the evidence is invoked without imposing a burden of proof on either party that they would not be able to discharge. However, with an increasing trend towards the use of "secret evidence" in judicial proceedings, possibly obtained by torture inflicted by foreign officials, together with a too-heavy burden being placed on the individual, there exists the potential of undermining the preventive element of article 15.

48. It is for this reason that the Special Rapporteur considers it necessary and timely to review recent jurisprudence of national courts, notably the Mounir El Motassadeq case before the German courts and the United Kingdom House of Lords judgement in *A and Others v. Secretary of State for the Home Department*, along with other relevant jurisprudence of international human rights mechanisms including the Committee against Torture, in order to offer States parties guidance in the implementation of their obligations under article 15.

B. The Mounir El Motassedeq Case before the German Courts

49. On 19 February 2003, the Hanseatic Higher Regional Court in Hamburg sentenced Mounir El Motassadeq to 15 years' imprisonment on 3,066 counts of accessory to murder and membership of a terrorist organization in connection with the 11 September 2001 attacks in the United States.[4]

50. On 4 March 2004 the Federal Court of Justice (the German Supreme Court) quashed the judgement on appeal and sent the case back to the Higher Regional Court for retrial.[5] The reason for the annulment was that Mr. El Motassadeq's conviction was based to a decisive extent on the testimony of the witness Ramzi Binalshibh, received from the United States, but neither the witness himself, who was in secret United States custody, nor any documentation from United States interrogation had been made available for the proceedings.

51. During the retrial the Hamburg Court officially requested the United States Department of Justice to transfer the witnesses for direct questioning, to allow video-conference questioning or, alternatively, to send it minutes of the interrogations carried out to date. The Court explicitly requested that an official of the Federal Bureau of Investigation (FBI) be granted permission to explain how the testimonies of the witnesses in United States custody had been obtained. In its letters of 9 August 2004 and 9 May 2005 the United States Department of Justice merely sent summaries of the interrogations of three suspected Al-Qaida members Ramzi Binalshibh, Khalid Sheik Mohamed and Mohamed Ould Slahi) for use in the trial. It stated that it was not, however, in a position to disclose the whereabouts of the detainees or to describe the circumstances in which the testimonies had come about.

52. As there had been various reports of NGOs, in particular by Amnesty International and Human Rights Watch, and in the media about the use of torture in United States custody, the Hamburg Court had to decide whether the interrogation

[4] On the case of El Motassadeq see, e.g. the report of the Special Rapporteur on the question of torture (E/CN.4/2006/Add.1).

[5] Decision of the German Supreme Court of 4 March 2004, 3 StR 218/03.

summaries sent by the United States could be invoked and used as evidence in the trial in accordance with article 15. It heard a great deal of evidence, including the testimony of an FBI official, a leading figure of the United States commission charged with examining the 11 September attacks, and collected evidence from the German Chancellery, the Federal Ministries of Justice and the Interior, the Federal Intelligence Service and the Federal Office for the Protection of the Constitution. The German authorities replied that the competent United States authorities prevented them from releasing information which had been obtained only for intelligence purposes. To make this information publicly available would lead to the disruption of international diplomatic and secret service relations between Germany and the United States.[6] Finally, the Court also heard as evidence reports from Amnesty International and Human Rights Watch regarding the alleged torture of detainees in United States custody.

53. In its procedural decision of 14 June 2005,[7] the Hamburg Court decided to accept, as trial evidence, the full summaries of the testimonies given by the three witnesses cited above. The Court based this decision on the reasoning that article 15 only excluded statements as evidence which were *established* to have been made as a result of torture, but that in the present case it was impossible for the Court to establish that the testimonies had in fact been extracted by torture. Although the press articles and NGO reports heard in court gave indications that alleged Al-Qaida members had been tortured, the Court was unable to verify them, as no primary sources had been named. Since the summaries of the interrogations also contained exculpatory elements, this was taken as an indication that no torture had been used.

54. In its judgement of 19 August 2005, the Hamburg Court sentenced Mr. El Motassadeq to seven years' imprisonment for membership of a terrorist organization. In his oral reasoning, the presiding judge stated that the summaries sent by the United States Department of Justice did not have sufficient probative value, positive or negative, given the uncertainty over how the statements had been obtained. The testimonies of the detainees had therefore only been taken into account, in considering the evidence and reaching a verdict, to the extent to which they had been clearly corroborated by other objective evidence.[8] From the written judgement, it is clear that in the retrial Mr. El Motassadeq was not convicted of abetting the murder of the victims of the 11 September attacks.

55. A careful analysis of the decision makes clear that the three witnesses whose testimony was used by the Hamburg Court were in fact victims of enforced disappearance. The United States authorities confirmed their being in United States custody but declined to provide any information on their fate and whereabouts. The Hamburg Court stated explicitly that the place of detention had been kept secret by the United States since September 2002 (in the case of Mr. Binalshibh) and March

[6] See decision IV, op. cit. At note 3, p. 5, *„Die von Seiten des Senates um Informationen ersuchten Behörden der Bundesrepublik Deutschland ... haben auf die Ersuchen so genannte Sperrerklärungen abgegeben, in denen darauf verwiesen worden ist, dass ihnen von Seiten der zuständigen Behörden der USA nicht gestattet worden ist, die ihnen allein zu geheimdienstlichen Zwecken überlassenen Informationen in dem vorliegenden Gerichtsverfahren zur Verfügung zu stellen. Ein Verstoß gegen diese Verwendungsbeschränkungen würde zur Störung der diplomatischen und geheimdienstlichen internationalen Beziehungen führen und deshalb die Sicherheitsinteressen der Bundesrepublik Deutschland gefährden"*.

[7] See decision IV, op. cit. at note 3.

[8] See judgement, op. cit. at note 3.

2003 (in the case of Mr. Sheikh Mohammed). For the witness Mr. Ould Slahi, the date of arrest was not known.[9] In its legal reasoning, the Hamburg Court, however, held that prolonged incommunicado detention of less than three years and the denial of a proper trial did not amount to a particularly serious human rights violation which would, under section 136a of the German Criminal Procedure Code, have excluded the use of statements made during this secret detention.[10] This legal reasoning clearly underestimates the seriousness of the crime and human rights violation of enforced disappearance.[11] In a comparable case against the Libyan Arab Jamahiriya, the Human Rights Committee, for example, characterized even a period of three years of incommunicado detention as amounting to torture.[12] Similarly, the United Nations Commission on Human Rights has repeatedly stressed that prolonged incommunicado detention may facilitate the perpetration of torture and can itself constitute a form of cruel, inhuman or degrading treatment or even torture.[13]

56. Even before the adoption of an explicit provision on the non-admissibility of evidence in the future International Convention for the Protection of All Persons from Enforced Disappearance,[14] the Hamburg Court should have applied article 15 and ruled out categorically the use of any statements made by persons held in incommunicado detention for a prolonged period of time. Whether the use of torture for the purpose of extracting information can be established or not is irrelevant in cases of enforced disappearances as the very fact that a person is kept incommunicado for a prolonged period of time amounts to torture or at least cruel, inhuman or degrading treatment. It is the view of the Special Rapporteur that, in accepting, as the Hamburg Court reluctantly did, that in criminal trial a court use evidence provided by foreign intelligence services, at the same time clearly admitting that this evidence was obtained through the interrogation of victims of enforced disappearance, the principle of article 15 and other basic minimum

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[9] See decision IV, op. cit. at note 3: *„Der Aufenthalt der Zeugen Binalshibh und Sheikh Mohammed wird jedoch bereits seit mehreren Jahren geheim gehalten, im Falle Binalshibhs seit seiner im September 2002 erfolgten Ergreifung und bei Sheikh Mohammed seit seiner Festnahme im März 2003. Für den Zeugen Ould Slahi ist das Datum seiner Ergreifung nicht bekannt"*.

[10] Ibid.: *„Ob dies (Verschwindenlassen) im Ergebnis anzunehmen wäre, kann jedoch dahin gestellt bleiben, da die oben bejahte entsprechende Anwendung des in § 136a StPO normierten Beweisverwertungsverbotes nach zutreffender Auffassung nur in Fällen besonders gewichtiger Menschenrechtsverletzungen in Betracht kommt. Dazu zählt die bloße Nichtgewährung von Freiheit und Außenkontakten sowie die Versagung eines geordneten Gerichtsverfahrens nach Auffassung des Senates jedenfalls nach dem hier anzunehmenden bisherigen Zeitraum von höchstens drei Jahren wie im Falle des im September 2002 festgenommenen Binalshibh noch nicht"*.

[11] Cf. the report of the independent expert of the Commission on Human Rights charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances (E/CN.4/2002/71). See also the statement of Amnesty International of 19 August 2005.

[12] See the case of *El-Megreisi v. Libyan Arab Jamahiriya*, communication No. 440/1990. See also the case of *Rafael Mojica v. Dominican Republic*, communication No. 449/1991, para. 5.7, in which the Human Rights Committee concluded that the disappearance of persons is inseparably linked to treatment that amounts to a violation of article 7 of the International Covenant on Civil and Political Rights.

[13] See, e.g., Commission on Human Rights resolution 2005/39, para. 9.

[14] See article 11(2) of the Convention, annexed to Human Rights Council resolution 2006/1.

standards of the international rule of law and human rights are seriously undermined.

C. House of Lords judgement in *A and Others v. Secretary of State for the Home Department*

57. In a landmark judgement of 8 December 2005, the House of Lords took a position which can be compared to that of the Hamburg Court. As its German counterpart, it addressed the question of whether States parties to the Convention could in cases against terrorist suspects allow evidence which may have been procured by foreign (United States) secret service officials who had possibly used torture to obtain it. The appellants were foreign (non-United Kingdom) nationals suspected of terrorism who had been detained in the United Kingdom for a prolonged period of time without having had any criminal charges brought against them. In response to the 11 September attacks in the United States, the United Kingdom Parliament had enacted Part 4 of the Anti-Terrorism, Crime and Security Act 2001 (ATCSA) entitled "Immigration and Asylum", which allowed for the indefinite detention without trial of foreign terrorist suspects who could not be deported from the United Kingdom owing to the principle of non-refoulement in article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European convention on Human Rights (ECHR)) and article 3 of the Convention against Torture. This legislation necessitated a derogation from article 5 of ECHR and article 9 of the International Covenant on civil and Political Rights (ICCPR).[15] Under these broad administrative detention powers, the Home Secretary, by the end of 2003, had certified 17 individuals for indefinite detention. Nine of them challenged the lawfulness of their detention before British courts. In a well-known judgement of 16 December 2004, the House of Lords, by a majority of 8 to 1, declared that the United Kingdom's derogation was unlawful and quashed the Derogation Order of 2001.[16] The Law Lords held, in particular, that the derogation was disproportionate, as it only permitted detention of foreign terrorist suspects in a way that discriminated on the ground of nationality or immigration status, in violation of articles 5 and 14 of ECHR.

58. In response to this judgement, Parliament passed the Prevention of Terrorism Act 2005 (PTA), which repealed Part 4 of ATCSA and provided instead for the issuing of control orders that would apply to British and foreign terrorist suspects alike.[17] In addition, the Home Secretary pursued a policy of returning foreign terrorist suspects to their countries of origin on the basis of diplomatic assurances

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[15] See declaration contained in a note verbale from the Permanent Representative of the United Kingdom, dated 18 December 2001, registered by the Secretariat General on 18 December 2001, http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?PO=UK&NT=&MA=3&CV=0&NA=&CN=999&VL=1&CM=5&CL=ENG. See also, "Notification under Article 4 (3) of the Covenant (Derogations)" United Kingdom, 18. December 2001, http://www.unhchr.ch/html/menu3/b/treaty5_asp.htm.

[16] *A and others v. Secretary of State for the Home Department* (2004) United Kingdom House of Lords 56, judgement of 16 December 2004.

[17] The Court of Appeal recently held that that control orders under the PTA amounted to a deprivation of liberty contrary to article 5 of ECHR, *Secretary of State for the Home Department and JJ, KK, GG, HH, NN and LL* (2006) England and Wales Court of Appeal (Civil Division) 1141, 1 August 2006.

aimed at circumventing the principle of non-refoulement. Until the end of 2005, respective Memorandums of Understanding were signed with the Governments of Jordan, the Libyan Arab Jamahiriya and Lebanon.[18]

59. In the meantime, nine of the foreign detainees also appealed against their certifications issued under ATCSA to the Special Immigration Appeals Commission (SIAC), a superior court of record established by statute. Among other grounds, they claimed that the Home Secretary had based the decision to detain them on statements obtained through torture of detainees held by the United States. In the course of assessing the legality of the detention certificates by the Home Secretary, SIAC explicitly raised the question whether it may receive and use evidence which has or may have been procured by torture inflicted, in order to obtain evidence, by officials of a foreign State without the complicity of the British authorities. SIAC answered this question in the affirmative and, consequently, confirmed all the certificates issued. This decision was upheld on 11 August 2004 by the British Court of Appeal by a majority of 2 to 1[19] despite the fact that the Court acknowledged that the detainees had presented sufficient evidence to prove the potential use of torture in the gathering of the evidence.[20]

60. On 8 December 2005, the House of Lords decided on the appeal of 10 detainees against the judgement of the Court of Appeal.[21] The leading opinion unanimously overturning the judgement of the Court of Appeal by holding that the United Kingdom may not use evidence that a foreign State has procured through torture in a judicial proceeding against a suspected terrorist was given by Lord Bingham. He interpreted article 15 of the Convention against Torture as imposing a blanket exclusionary rule that applies to all proceedings[22] and concluded as

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[18] See in this respect the reports of the Special Rapporteur on the question of torture to the General Assembly (A/60/316) and the Commission on Human Rights (E/CN.4/2006/6). See also Memorandums of Understanding and NGO Monitoring: a challenge to fundamental human rights, Amnesty International index: POL 30/002/2006. Available at: http://www.amnesty.org.ru/library/Index/ENGPOL300022006?open&of=ENG-385.

[19] *A and others v. Secretary of State for the Home Department* (2004) England and Wales Court of Appeal (Civil Division) 1123, at para. 137. See the criticism by the Committee against Torture in its conclusions and recommendations on the United Kingdom of Great Britain and Northern Ireland Crown Dependencies and Overseas Territories of 10 December 2004 (CAT/C/CR/33/3) and the joint statement on the occasion of the International Day in Support of Victims of Torture, 26 June 2004, in *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 44* (A/59/44), chap. I, sect. K, and by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in CPT/Info (2005)10, para. 31.

[20] See also Brandie Gasper, "Examining the Use of Evidence Obtained under Torture: The Case of the British Detainees May Test the Resolve of the European Convention in the Era of Terrorism", *American University International Law Review*, vol. 21 (2005), p. 277, note 7.

[21] *A and others v. Secretary of State for the Home Department* (2005) United Kingdom House of Lords 71, judgement of 8 December 2005.

[22] Ibid., para. 35. It should be noted, however, that the House of Lords drew a distinction between that evidence which is admissible in judicial proceedings, and that evidence which the executive branch of Government can use and act upon in safeguarding the security of the State. Lord Nicholls held, for example, that the Government cannot be expected to close its eyes to information at the price of endangering the lives of its citizens (ibid., para. 69). Lord Bingham used the following example under the assumption of officially authorized British torture (ibid., para. 47): "If under such torture a man revealed the whereabouts of a bomb in the Houses of Parliament, the authorities could remove the bomb and, if possible, arrest the terrorist who planted it ...."

follows:[23] "...the English common law has regarded torture and its fruits with abhorrence for over 500 years, and that abhorrence is shared by over 140 countries which have acceded to the Torture Convention. I am startled, even a little dismayed, at the suggestion (and the acceptance by the Court of Appeal majority) that this deeply-rooted tradition and an international obligation solemnly and explicitly undertaken can be overridden by a statute and a procedural rule which makes no mention of torture at all."

61. While the House of Lords was unanimous in its condemnation of torture and the use of evidence extracted by torture (with or without the complicity of British authorities) in judicial proceedings, it was divided by 4 to 3 on the question of the burden of proof in establishing whether or not a statement was obtained by torture. The majority of the Law Lords (Lord Carswell, Lord Brown and Lord Rodger) agreed with the test put forward by Lord Hope, who stated that once the appellant raises the issue, for example by showing that the evidence came from a country that is alleged to practise torture, the burden of proof passes to SIAC, which will assess whether there are reasonable grounds to suspect that torture has been used in the case under scrutiny.[24] Lord Hope then held that evidence should be excluded if it is established, by means of diligent inquiries into the sources that it is practicable to carry out and on a balance of probabilities, that the information relied on by the Home Secretary was obtained by torture.[25] This seems to be exactly the test applied by the Hamburg Court in the El Motassadeq procedural decision cited above.[26] In other words, if SIAC concluded that there was no more than a possibility that the statement was obtained by torture, then it would not have been established and the statement would be admissible.[27]

62. The test preferred by the minority was put forward by Lord Bingham, and supported by Lord Nicholls and Lord Hoffman.[28] If the appellant advances a plausible reason why evidence may have been procured by torture, SIAC would have to inquire as to whether there is a real risk that the evidence has been obtained by torture. If there is a real risk, the evidence should not be admitted. The three Law Lords strongly rejected the test preferred by the majority as it will in fact place a burden on the appellants that they can seldom discharge.[29] Lord Bingham even regretted that the House of Lords had lent its authority to a test which will undermine the effectiveness of the Convention, and deny detainees the standards of fairness to which they are entitled under articles 5 (4) and 6 (1) ECHR.[30] He concluded that "it is inconsistent with the most rudimentary notions of fairness to blindfold a man and then impose a standard which only the sighted could hope to meet."[31]

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[23] Ibid., para. 52.

[24] Ibid., para. 116.

[25] Ibid., para. 121.

[26] See above. In fact, Lord Hope does refer extensively to the El Motassedeq case in support of his opinions. Ibid., paras. 122-123.

[27] Lord Brown, in ibid., para. 172.

[28] Ibid., paras. 54-62, 80 and 98.

[29] Lord Nicholls, in ibid., para. 80.

[30] Lord Bingham, in ibid., para. 62. On the compatibility of the use of evidence obtained by torture with ECHR, see also Gasper, op. cit., p. 277.

[31] Ibid., para. 59.

D. Conclusion

63. The Committee against Torture has held in its individual complaints procedure that the applicant is only required to demonstrate that his or her allegations of torture are well founded.[32] This means that the burden of proof to ascertain whether or not statements invoked as evidence in any proceedings, including extradition proceedings, have been made as a result of torture shifts to the State.[33]

64. Similarly, the Hanseatic Higher Regional Court of Hamburg, in the case of Mounir El Motassadeq cited above,[34] recognized its duty to ascertain, by all available means of taking evidence, whether or not the witness testimonies provided by the United States authorities, in light of press and NGO reports of the frequent use of torture against suspected terrorists, were in fact extracted by torture. Only the final conclusions of the Hamburg Court, were problematic, i.e. that the testimonies were admissible in a criminal trial owing to the fact that the veracity of the torture allegations, because of the non-cooperative attitude of the respective United States and German Government authorities, could not be fully established. In the Special Rapporteur's opinion, the Hamburg Court failed to shift the burden of proof to those Government authorities who actually invoked the contested evidence. In light of well-founded allegations about the torture and enforced disappearance of the witnesses in United States custody, it was the responsibility of the Prosecutor (or the Court) to prove beyond reasonable doubt that the testimonies were not extracted by torture, rather than to prove that they were actually obtained by torture.

65. The clearest statement that the conventional approach to the burden of proof is inappropriate in relation to article 15 of the Convention can be derived from the House of Lords judgement of December 2005 cited above. The Law Lords agreed on the need to devise a procedure that would afford protection to the appellant without imposing a burden of proof on either party that they would not be able to discharge.[35] But they disagreed on the specific test in relation to the burden of proof. The majority followed the test of Lord Hope that evidence should only be excluded if it is established, by means of diligent inquiries into the sources and on a balance of probabilities, that the evidence invoked was in fact obtained by torture.[36] Again, this approach does not seem really to shift the burden of proof to the Government authorities. The burden of proof established by the majority of the House of Lords may well be impossible to meet by most of the foreign terrorist suspects presently in detention on the basis of control orders issued under the Prevention of Terrorism Act 2005. In the opinion of the Special Rapporteur, the test put forward by Lord Bingham, and supported by Lord Nicholls and Lord Hoffman, seems to be most in line with the letter and spirit of article 15.[37] According to this test for the burden of proof, the appellant must first advance a plausible reason why evidence may have been procured by torture. It would then be for the court to inquire as to whether there is a real risk that the evidence has been obtained by

[32] *G.K. v. Switzerland*, communication No. 219/2002, para. 6.11. See also *P.E. v. France*, communication No. 193/2001, para. 6.6.

[33] *G.K. v. Switzerland*, ibid., para. 6.10, with reference to *P.E. v. France*, ibid., para. 6.3.

[34] See note 8 above.

[35] See, e.g., Lord Bingham and Lord Carswell in United Kingdom House of Lords 71, paras. 55 and 155.

[36] Ibid., paras. 121, 158 and 172.

[37] Ibid., paras. 54-62, 80 and 98.

torture, and if there is, the evidence should not be admitted. In other words, the evidence should only be admitted if the court establishes that there is no such real risk.

IV. Entry into force of the Optional Protocol to the Convention against Torture

A. History and rationale

66. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force on 22 June 2006. The Special Rapporteur considers this new instrument to be the most effective and innovative method for the prevention of torture and ill-treatment worldwide.[38] It was almost 30 years ago that Jean-Jacques Gautier, a Geneva banker dedicated to the eradication of torture, proposed a universal system of preventive visits to places of detention on the model of the visits carried out by the International Committee of the Red Cross and Red Crescent. In 1980, Costa Rica submitted a text for an optional protocol to the Commission on Human Rights which was based on the Gautier idea as developed by non-governmental organizations such as the International Commission of Jurists and the then Swiss Committee against Torture, the predecessor of the Association for the Prevention of Torture. But the United Nations at that time was more concerned with the drafting and adoption of the Convention against Torture, and the Costa Rica protocol was taken over by the Council of Europe and developed into the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987. The preventive visits to places of detention carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) in all member States of the Council of Europe soon turned out to be so successful that the United Nations decided in the 1990s to continue the drafting process. On 18 December 2002, the General Assembly finally adopted the Optional Protocol, which contains important innovative elements as compared to its European counterpart.

67. The rationale FOR both instruments is based on the experience that torture and ill-treatment usually take place in isolated places of detention, where those who practise torture feel confident that they are outside the reach of effective monitoring and accountability. Since torture is absolutely prohibited under all legal systems and moral codes of conduct worldwide, it can only function as part of a system where the colleagues and superiors of the torturers order, tolerate, or at least condone such practices, and where the torture chambers are effectively shielded from the outside. The victims of torture are either killed or intimidated to the extent that they do not dare to talk about their experiences. If victims nevertheless complain about torture, they face enormous difficulties in proving what happened to them in isolation and, as suspected criminals, outlaws or terrorists, their credibility is routinely undermined by the authorities. Accordingly, the only way of breaking this vicious cycle is to expose places of detention to public scrutiny and to make the entire system in which police, security and intelligence officials operate more transparent and accountable to external monitoring.

[38] See also A/57/173, paras. 36-45.

68. Under article 2 of the Convention against Torture, all States parties are required to take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under their jurisdiction. With the recent entry into force of the Optional Protocol, the United Nations offers the most effective preventive measure. One could, therefore, argue that States parties to the Convention are under an obligation to ratify the Optional Protocol as soon as possible. Upon ratifying or acceding to the Optional Protocol, States parties to the Convention, in addition to the traditional monitoring by the Committee against Torture, agree to accept unannounced visits to all places of detention by both the Subcommittee on Prevention of the Committee and one or more independent national mechanisms for the prevention of torture at the domestic level.

B. Prison visits by the Subcommittee and national visiting bodies

69. The Subcommittee of the Committee against Torture will initially consist of 10 independent, multidisciplinary experts who will conduct regular visits to places of detention in States parties similar to those carried out by CPT. It will communicate its recommendations and observations to the State party and the respective national preventive mechanism and will submit an annual report to the Committee against Torture.

70. The main feature distinguishing the Optional Protocol from its European counterpart is the obligation of States parties to maintain, designate or establish, within one year after ratification, one or several independent national preventive mechanisms. When establishing such domestic visiting commissions, States parties, in accordance with article 18 (4) of the Optional Protocol, shall give due consideration to the Principles relating to the status of national human rights institutions (The Paris Principles). One may, therefore, envisage that States in which truly independent national human rights commissions, parliamentary commissioners, ombuds-institutions or national human rights institutes exist will designate these national human rights institutions as national preventive mechanisms under the Optional Protocol. States parties that do not yet have such bodies might establish independent visiting bodies as a first step to creating a fully fledged national human rights institution. In any case, the Optional Protocol and the Paris Principles are mutually reinforcing in the common goal of developing a genuine domestic human rights culture.

71. While the Subcommittee on Prevention will only be in a position sporadically to conduct missions to a growing number of States parties, the main responsibility for ensuring increased transparency and accountability of places of detention will rest on the national visiting bodies. It is, therefore, of the utmost importance that States parties create a sufficient number of national visiting bodies, ensure membership from different professions, fully respect the independence of these bodies and their experts and provide them with all resources necessary to carry out their important functions. In order to maintain a deterrent effect, national visiting bodies should carry out visits to larger or more controversial places of detention every few months, and in certain cases at even shorter intervals. The need for a sufficient number of visiting commissions and experts can be illustrated by an example from the Special Rapporteur's own country, Austria. Starting from its first visit to Austria in 1990, the CPT detected a certain risk of ill-treatment in Austrian police detention centres and recommended the creation of a domestic visiting body.

In 1999, the Austrian Parliament established a Human Rights Advisory Board at the Federal Ministry of the Interior consisting of 11 members and six regional visiting commissions composed of six to eight independent experts each. Austria is a small country, and these commissions are only competent to visit police detention centres and lock-ups. Nevertheless, a total of some 50 board members and commission experts spend a considerable amount of their time conducting visits, writing reports, establishing working groups for specific issues and advising the Minister of the Interior how to improve human rights in police detention. Taking into account that the national preventive mechanisms envisaged in the Optional Protocol will have to visit and monitor on a regular basis, in addition to police lock-ups and detention centres, all judicial prisons, pre-trial detention centres, juvenile detention centres, military jails, psychiatric institutions, and immigration, asylum and other detention centres in the respective countries, it becomes evident that considerable resources must be invested in such a system in order to make it effective.

C. Preconditions for effective monitoring

72. Preventive visits to places of detention have a double purpose. The very fact that national or international experts have the power to inspect every place of detention at any time without prior announcement, have access to prison registers and other documents, are entitled to speak with every detainee in private and to carry out medical investigations of torture victims has a strong deterrent effect. At the same time, such visits create the opportunity for independent experts to examine, at first hand, the treatment of prisoners and detainees and the general conditions of detention. The manner in which a society treats its prisoners and detainees, including aliens, is a major indicator of the commitment of such a society to human rights in general. Many problems stem from inadequate systems which can easily be improved through regular monitoring. By carrying out regular visits to places of detention, the visiting experts usually establish a constructive dialogue with the authorities concerned in order to help them resolve problems observed.

73. Based on his experience as head of an expert commission carrying out regular visits to police detention centres in Austria and from fact-finding missions in his capacity as United Nations Special Rapporteur on the question of torture, the Special Rapporteur is deeply convinced that a system of unannounced visits to all places of detention by independent experts is by far the most effective and sustainable mechanism for gradually developing a prison culture based more on respect for human dignity and personal integrity than on fear, exclusion and contempt. It is for this reason that the Special Rapporteur has recommended to all the States that he has visited so far to ratify the Optional Protocol as quickly as possible. The first country that the Special Rapporteur visited after his appointment in December 1994, Georgia, was also the first country to follow this recommendation. The Special Rapporteur strongly encourages the other States he has visited, i.e. Mongolia, Nepal, China and Jordan, to follow the example of Georgia and deposit their instrument of ratification soon. He remains at the disposal of the States parties to the Optional Protocol to assist them in their efforts to establish truly independent and effective national preventive mechanisms. Based on his experience, the most important aspects of prison inspection is unrestricted access to all detention facilities, the possibility to carry out independent medical examines of detainees, as well as the right to interview detainees in private, i.e. without any

prison official being able to see or hear the conversation.[39] Otherwise, detainees cannot develop the trust in the inspection team that is absolutely essential for receiving truthful information.

D. Conclusion

74. **Torture usually occurs in isolated places of detention. It can only function as part of a system where colleagues and superiors order, tolerate, or at least condone such practices and where the torture chambers are effectively shielded from the outside. The most effective way of preventing torture therefore is to expose all places of detention to public scrutiny.**

75. **The Special Rapporteur welcomes the recent entry into force of the Optional Protocol to the Convention against Torture and reminds States parties to the Convention of their obligation under its article 2 to take effective measures to prevent acts of torture in any territory under their jurisdiction. Accordingly, he strongly appeals to all States to ratify the Optional Protocol as soon as possible and to establish truly independent, effective and well-resourced national prevention mechanisms with the right to carry out unannounced visits to all places of detention at any time, to conduct private interviews with all detainees and to have them undergo a thorough, independent medical examinations.**

[39] See the section of report of the Special Rapporteur concerning country visit methodology (E/CN.4/2006/6, paras. 20-27).